

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

Eighth Meeting

Held on Monday 11 November 1946 at 10.30 a.m.

Chairman: Mr. VIDELA (Cuba)

1. Adoption of Agenda

The CHAIRMAN proposed the following Agenda:

- (a) Discussion of Article 15.
- (b) Discussion of Article 16.
- (c) Discussion of Article 15.
- (d) Discussion of Article 32.

The Agenda was adopted.

2. Discussion of Article 15 - Publication and Administration of Trade Regulations - Advance Notice of Restrictive Regulations

Mr. OPTEDAL (Norway) objected to the requirement in paragraph 2 of Article 15 for the establishment of independent judicial or administrative tribunals for the review and correction of administrative action relating to customs matters. In Norway, decisions regarding customs matters could be referred to higher administrative officers or to the ordinary courts, which were in fact wholly independent of agencies entrusted with the administration of customs matters. The system had worked satisfactorily for many years, and any attempt to introduce in Norway the procedure contemplated by the paragraph would be considered a backward step. Moreover, Norway could not establish more than one such tribunal, which would create difficulties for complainants in distant parts of the country.

It would be difficult for Norway to comply with the provision of paragraph 3 providing for the non-application of tariff changes to goods in transit. All tariff changes became effective upon decision of the Norwegian Parliament, a system which had been fully satisfactory. The difficulty would be to ascertain positively that goods had been en route.

He would prefer to have paragraph 2 deleted, and paragraph 3 amended to exclude the reference to goods in transit.

Mr. SIMS (Canada) suggested that, in the absence of Mr. JOHNSON (United States), the United Kingdom Delegate Mr. RHYDDERCH should be asked to serve as Rapporteur, with the assistance of Mr. KENNEDY (United States). The United Kingdom Delegation would be in a better position than others to provide the facilities necessary to complete the amount of work involved in preparing the Report of the Rapporteurs.

Mr. RHYDDERCH (United Kingdom) accepted the post of Rapporteur.

Mr. le BON (Belgium) said that Belgium imposed such import duties as were in force at the time customs documents were submitted to the Belgian customs authorities. To exempt from the requirement, in the event of changes in rates of duty, goods which were in transit on the effective date of the change would create administrative difficulties.

Such an exception would also cause discrimination against importers of merchandise from nearby countries in relation to importers of merchandise from more distant countries.

Paragraph 3 made no reference to the treatment to be accorded to in-transit merchandise in the event of reduction in duties. Belgium applied the same treatment in either event, and that avoided discrimination.

He referred to the document concerning Articles 9-17 and 32 submitted by the Delegations of the Netherlands and of the Belgian-Luxembourg Economic Union (E/P/C/T/C.II/32) for additional comments regarding Article 15.

Mr. BONNE (France) said that the views of the French Delegation had been stated clearly in the Report of the Rapporteurs (E/PC/T/C.II/W.41)

Mr. CHELRY (South Africa) observed that in his country appeals from decisions of customs authorities might be made to higher officials within the customs administration and to courts of law. It would be difficult for South Africa with its small tax-paying population to extend its judicial system to provide an independent tribunal to consider customs matters.

An official of the United States Government visiting Pretoria before the opening of the Preparatory Committee meeting had stated to South Africa officials that in his opinion paragraph 2 did not necessarily envisage a separate judicial or administrative tribunal for the consideration of customs matters, provided the ordinary judicial system of a country was quite independent of customs administration.

Increased import duties became effective immediately in South Africa. That was so in order to prevent evasion of increased import duties by importers who might hold large stocks of merchandise in bond. If the effective date of duty increases was delayed, the Government's budget would be affected. But dumping duties were not imposed on in-transit shipments.

Mr. BAYER (Czechoslovakia) stated that the views of his Delegation were included in the Report of the Rapporteurs (E/PC/T/C.II/W.41).

He called attention to a mistake in a reference to an article of the Geneva Convention of 1925. It should have been Article 4, not Article 7.

Mr. NEHRU (India) could not comment on Article 15 in detail, because it was still under consideration by his Government. But he foresaw certain difficulties, if the Article was adopted as drafted.

He agreed that the principle stated in paragraph 1 was sound; and he was prepared to accept it.

He was prepared to recommend his Government to give careful consideration to the adoption of the requirement for an independent judicial or administrative tribunal. Here again he felt the principle to be sound.

But serious administrative difficulties would result, if India was to exempt goods in transit from increased import duties. He reserved his position on paragraph 3, until further consideration could be given to it. He was not clear as to the purpose of paragraph 3.

Mr. MORTON (Australia) saw no cause for objection to paragraph 1 of Article 15.

Australia had a Tariff Board, to which appeals could be made on customs matters after they had been reviewed within the customs administration. Any effort to impose a special tribunal on small countries would be unjustifiable.

Australian law specified that duties applied to goods at the time of import, i.e. at the time a vessel entered port to discharge cargo. Australia could not consider a change in its laws to conform to the requirement of paragraph 3. The greatest concession Australia could make on that point would be to continue the present practice of applying to goods in transit the reduced rate of duty or duty-free status temporarily applicable, for particular reasons, to goods normally subject to high rates of duty.

Mr. LOPES RODRIGUES (Brazil) said that his country had always followed the principles set forth in Article 15. A Board of Appeals, composed of officials of the Treasury Department and business men, had been established in 1932, and any decision of the Board might be taken to the courts.

Brazil permitted a period of ninety days before the enforcement of increased rates of duty. However, the new Constitution of Brazil permitted the immediate imposition of dumping duties if necessary.

Mr. SIMS (Canada) called the attention to the word "or" in the clause of paragraph 2 providing for the maintenance or establishment of "judicial or administrative tribunals". The drafters of the paragraph undoubtedly had both types in mind. There was no problem of compliance with the paragraph, if a country had a procedure whereby customs decisions could be referred to the courts for adjudication.

Since 1932 Canada had had an independent tribunal for customs matters, which had in practice worked satisfactorily. Decisions could be obtained more cheaply under an independent tribunal. Canada also had provision whereby any case involving a customs dispute could be taken to a Tariff Board at the request of an importer.

In a country where provision was made for appeals from decisions of a first appraiser to senior customs officials, the necessity for an independent tribunal was not so obvious. An independent tribunal was a necessity in other countries.

Most countries had a system whereby tariff changes were made at specific times of the year. Canada could not support any requirement other than for the immediate effectiveness of new rates. In the special circumstances relating to trade with the United States it would be particularly difficult to ascertain when goods were actually en route.

He felt that it would be necessary to qualify paragraph 3 to provide that administrative rulings by customs officials should not have the effect of increasing duties on merchandise in transit.

Mr. KENNEDY (United States), in response to queries regarding paragraph 2, stated that in his opinion it did not require the establishment of tribunals exclusively for customs purposes. The United States had a Customs Court; but its higher court was the Court of Customs and Patents Appeals.

Mr. RHYDDERCH (United Kingdom) recorded his objection to the requirements in paragraph 2 for the setting up of an independent customs tribunal in view of the possible doubt as to the meaning of the paragraph.

He felt that increased rates of duty should be made effective immediately. How would paragraph 3 operate with respect to decreases in import duties?

He pointed out that importers in the United Kingdom could take advantage of a law which permitted them to add increases in duties to prices. He felt that other countries had similar provisions.

He agreed with the Delegate of Belgium that exempting goods in transit from advances in duties would discriminate against imports from nearby countries. He suggested the deletion of paragraph 2.

Speaking as Rapporteur, Mr. SIM (Canada) inquired whether his understanding was correct that the Sub-Committee desired its Rapporteurs, in their report regarding paragraph 2, to indicate recognition of a distinction between judicial and independent tribunals.

The CHAIRMAN announces that Mr. John M. LODDY, an Adviser to the United States Delegation, would attend the Sub-Committee's next meeting to explain that point. The discussion of Article 15 would be concluded at that time.

Mr. OPTEDAL (Norway) wished Norway's views regarding Article 15, as included in Document E/PC/T/C.II/9, to be included in the Rapporteurs' Report.

3. Discussion of Article 16 - Information, Statistics, and Trade Terminology

Mr. LOPES RODRIGUES (Brazil) said that Brazil would submit information to the Organization as rapidly as possible. It was at present impossible to indicate how long it would take to prepare such information.

Mr. NEHRU (India) reserved his position. He thought that India would in general agree with the principles set forth in the Article, but it had not been possible to study the provisions in detail.

Mr. BONNE (France) said that France generally favoured the provisions of the Article. He emphasized the importance of uniform nomenclature. In that connection he felt that the recommendations of the Brussels and Geneva Conventions should be followed. Statistics should follow the system used in the League of Nations' "Statistics of International Trade". He did not feel that countries should be called upon to give statistics on such things as prices, subsidies, and quantitative restrictions.

Mr. Le BON (Belgium) said that Belgium and the Netherlands agreed with the statement of the French Delegate.

Mr. CHERRY (South Africa) thought that the requirements proposed in the Article were admirable in theory; but they might be difficult to carry out in practice, since they would require administrative reorganization and expansion of the civil service.

He assumed that the words "so far as practicable" in paragraph 2 might be interpreted as an escape clause. Since South Africa's tariff classification was not detailed, it might be more useful in the particular case of South Africa to use the statistical classification of the South African Customs Administration.

He wondered whether paragraph 6 would require the use of standard weights and measures. That would be a difficult problem.

He thought that the last clause of the second sentence of paragraph 7 might be interpreted as an escape clause.

South Africa had not been able to revise its customs classification nomenclature in accordance with the League of Nations report on "International Customs Nomenclature" (1934), since the list set forth in that report was too detailed. South Africa had, on the other hand, revised its statistics nomenclature in accordance with the League of Nations' "Minimum List of Statistics".

He agreed with the French Delegate that statistics on such things as prices and balance-of-payments should not be required.

Mr. BAYER (Czechoslovakia) agreed with the main principles of the Article. The ITO would have to have adequate materials and statistics for its work. But he feared that the Article required too much. Personnel or budgetary problems might make it difficult for some countries to comply with the Article. He suggested that the ITO should work out reasonable minimum requirements, in co-operation with officers of the League of Nations.

Mr. LAWRENCE (New Zealand) pointed out, in connection with subparagraph (a) of paragraph 1, that New Zealand had little transit trade and did not record transit-trade statistics.

With reference to paragraph 2, he said that New Zealand's system of statistical reports generally provided more detailed information than would be the case if reports were based on tariff classifications. The proposed requirement that statistics should reveal the operation of restrictions would be impracticable, since restriction often varied in the course of a year.

He thought that the problem of differences in weights and measures would arise in connection with paragraph 6.

Mr. BAYER (Czechoslovakia) hoped that a uniform system of nomenclature could be worked out. He felt that the work of the League of Nations with respect to customs nomenclature had been excellent and that it should be continued.

#### 4. Discussion of Article 13 on Customs Formalities

Mr. MORTON (Australia) took exception to the requirement in paragraph 2 that Members should review their customs laws and regulations. It would be sufficient to require that a Member should review particular laws or regulations which other Members considered restrictive of trade or otherwise objectionable. In the forthcoming tariff negotiations a law or regulation affecting a particular item might be reviewed.

Mr. LOPES RODRIQUES (Brazil) said that except for some reservations with respect to paragraph 3, Brazil was in general agreement with the Article.

Mr. NEHRU (India) wondered whether paragraphs 1 and 4 of the Article were consistent. The former provided that fees and charges should be limited to the cost of services rendered. The latter provided a long list of fees to be covered by the provisions of the Article. Specific duties (used in connection with ad valorem duties) could not be limited to the cost of administration. India would have to reserve its position pending clarification of the scope of the definition in paragraph 4.

Mr. RHYDDERCH (United Kingdom) thought that the provisions of the Article should be in closer conformity with the Customs Formalities Convention of 1923. It should be made clear that fees for consular invoices were included under "consular transactions" in paragraph 4.

Mr. DONNE (France) thought that the drafting committee meeting in January should refer to the Geneva Convention. France had signed that Convention and had tried to comply with it. Other countries should subscribe to the principles set forth in the Convention. Paragraph 1 should foresee ultimate agreement with respect to customs formalities. The drafting in the 1927 Convention was better than that of Article 13 of the Charter.

With respect to paragraph 3, he pointed out that French law did not allow courts to consider intention of good faith; courts could only examine the actual facts of the case. But penalties were reduced or suppressed when errors were committed by the customs authorities.

Mr. le BON (Belgium) said that Belgium and the Netherlands had already expressed their views in document E/PC/T/C.II/32. The Geneva Convention of 1923 provided guidance for the drafting of provisions of the Charter on customs formalities.

In the case of errors (paragraph 3) penalties should be reduced to "theoretical fines", which would have the effect of discouraging further errors. But there should be no fine in the case of an error caused by the advice of a customs official. There should be a clear statement of what was meant by clerical errors.

Mr. CHERRY (South Africa) thought that the last sentence of paragraph 1 (Article 15) and the requirements for statistics in Article 16 were not consistent. If more statistics were required, it would probably be necessary to increase, rather than diminish, documentation requirements.

He supported the suggestion of the Australian Delegate with respect to paragraph 2.

South Africa did not oppose the two principles set forth in paragraph 3; but the spelling out of those principles in detail might invite abuse.

The provision that there should not be greater than nominal penalties was reasonable. But the question arose as to what constituted a clerical error. Cases might arise where there would be doubt whether the error was purely clerical. The second sentence of paragraph 3 might cause customs administrations to instruct customs officials not to give advice.

He suggested a more general wording for paragraph 3 along the following lines:

"Customs officers shall not take advantage of customs legislation to be unduly restrictive or obstructive and all border line cases shall be treated with due consideration and sympathy."

There should be provision that if the trade of one country was hampered by restrictive customs practices of another, the former country would be entitled to introduce similar practices against the latter.

Mr. BAYER (Czechoslovakia) said that Czechoslovakia generally favoured the principles embodied in the Article. Customs formalities of other countries had hindered Czechoslovakia's exports. He thought that Article 13 did not cover all formalities that should be considered. ITO Members should adhere to the Geneva Convention, or the provisions of that Convention should be included in Article 13. The ITO should conduct research with respect to customs formalities and work out uniform documents (e.g. consular invoices). Incorporation of the Geneva Convention in Article 13 would not be difficult since a majority of countries already adhered to the Convention.

Mr. RHYDDERCH (United Kingdom) agreed with the Delegate of South Africa with respect to the inconsistency between paragraph 1 (Article 13) and Article 16. He agreed with the Australian and South African Delegates with respect to paragraph 2, and with the South African Delegate concerning paragraph 3. The United Kingdom remitted fines when customs officers had been in error. The last sentence of paragraph 3 should be deleted.

Mr. MORTON (Australia) supported the United Kingdom Delegate with respect to the deletion of the second sentence of paragraph 3. Australia did not impose penalties, if errors had been caused by incorrect advice of customs officials. He was sure that other countries would exercise good judgment in that matter.

The Sub-Committee agreed to meet on Wednesday, 13 November 1946 at 10.30 a.m. to complete the discussion of Articles 13, 15 and 16 and to discuss Article 32.

Mr. HUTCHINS (Secretary) suggested that the Chairman of the Procedures Sub-Committee should be invited to attend the next meeting.

The meeting rose at 12.30 p.m.

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